EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED

95 1604 APR 4 1996

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

Ann Kletzelmann,

Petitioner,

versus

Capistrano Unified School District, et. al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

EMIR PHILLIPS, ESQ.
Attorney For Petitioner
1930 Wilshire, Blvd.,Ste 909
Los Angeles, CA 90057
(213)483-1456

32 pp

TABLE OF CONTENTS

		Page
I.	District Court's Order and Findings of Fact and Conclusions of Law.	1
II.	Court of Appeals Order.	12
III.	Robert Dorbin, M.D. March 1993 Medical Report.	22
IV.	April, 1993 IEP Report.	28
V.	Joint Request for Summary Judgment or in the Alternative an Evidentiary Hearing.	29

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANN KLETZELMAN,	) NO. SA CV 93-1038
Plaintiff,	) LHM (RWRx)
v.	) JUDGMENT
CAPISTRANO UNIFIED SCHOOL DISTRICT; BOARD OF EDUCATION OF CAPISTRANO UNIFIED SCHOOL DISTRICT; and Does 1-25, inclusive,	) Filed Feb. 10, 1994
Defendants.	)

In accordance with the Court's Findings of Fact and Conclusions of Law filed herein following the trial of this action,

IT IS HEREBY ORDERED THAT Ann Kletzelman take nothing by her complaint; and that defendants Capistrano Unified School District and the Board of Education of Capistrano Unified School District be awarded their reasonable costs of suit.

DATED: 2/10/94

LINDA H. McLAUGHLIN
United States
District Judge

3

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANN KLETZELMAN, Plaintiff, v. CAPISTRANO UNIFIED SCHOOL DISTRICT; BOARD OF EDUCATION OF CAPISTRANO UNIFIED SCHOOL DISTRICT; and Does 1-25, inclusive, Defendants.	NO. SA CV 93-1038 LHM (RWRx) Findings of Fact and Conclusions of Law Filed Feb. 10, 1994

This matter came on for trial on February 8, 1994, before the Honorable Linda H. McLaughlin, District Judge, with all parties being represented by their counsel. Based on all matters properly a part of the record, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff Ann Kletzelman is the mother of David Kletzelman, a child with disabilities.

2 . In February 1993, Mrs.Kletzelman requested that David's home school district, the Capistrano Unified School.District ("CUSD") test David and schedule an Individualized Education Program (IEP) meeting to determine David's educational needs and appropriate school placement for fall 1993.

3. The CUSD scheduled the IEP meeting for April 27, 1993. Prior to the IEP meeting, the Kletzelmans retained and consulted with Emir Phillips, Esq., and Virginia Russell, an educational advocate. The Kletzelmans also had David examined and tested by Robert Dobrin, M.D., a psychiatrist, who prepared a written opinion about David.

4. On April 27, 1993, Mr.and Mrs. Kletzelman, Virginia Russell, Dr.Dobrin, and Dr.Linda Pfeiffer, a psychologist, attended the first IEP meeting on David's behalf. The Kletzelmans believed that David should be placed in an appropriate private school,

based on his educational needs as a seriously emotionally disturbed (SED) child. CUSD personnel wanted to place David in a classroom for communicatively handicapped students at Del Obispo School, a CUSD school in San Juan Capistrano, California. However, the CUSD did not "rule out" placing David in a private school, and wanted to get a second opinion about David's condition. A second IEP meeting was scheduled for June 28, 1993.

5. Prior to the June 28 IEP meeting, the CUSD arranged for David to be examined by Orange County Mental Health Services ("OCMHS"), and also arranged with the Kletzelmans for a speech and language therapist to begin working with David.

6. OCMHS performed an assessment of David, involving extensive testing of David and meetings of David and his parents with a psychiatrist, a psychologist and a clinical social worker. OCMHS concluded that David was seriously emotional disturbed.

7. At the June 28 IEP meeting, OCMHS presented its conclusion orally. The CUSD agreed to classify David as educationally SED and place David at Mardan School, a private

school in Irvine, California. This placement was satisfactory to the Kletzelmans.

8. In July 1993, Mr. Phillips, on behalf of Mrs. Kletzelman, requested that the CUSD pay the attorneys' fees and costs incurred by the Kletzelmans in obtaining placement for David at Mardan School, pursuant to the attorneys' fees provision in the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(e)(4)(B). The CUSD refused. On October 15, 1993, Mrs. Kletzelman filed this lawsuit, seeking recovery of those attorneys' fees and costs from the CUSD .

9. The Kletzelmans did not make a request for an administrative hearing under the IDEA, 20 U.S.C. §§ 1400 et seq., and no administrative hearing was ever scheduled or held in this matter.

10. Any conclusion of law more appropriately designated as a findinq of fact is incorporated herein as a findinq of fact.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action under 28 U.S.C. § 1331 (federal question jurisdictlon).

2. Venue is proper in the Central District of California under 28 U.S.C. § 1391(b).

3. Courts may award reasonable attorneys' fees to the parents or guardian of a child with a disability who is a prevailing party "in any action or proceeding brought under" the IDEA. 20 U.S.C. § 1415(e)(4)(B). Under this statute, parents who prevail at the administrative hearing level are entitled to attorneys' fees. McSomebodies v. Burlingame Elementary School Dist., 897 F.2d 974, 975 (9th Cir. 1989); accord, Moore v. District of Columbia, 907 F.2d 165 (D.C. Cir. 1990) (en banc); Mitten v. Muscogee County School Dist., 877 F.2d 932 (llth Cir. 1989); Duane M. v. Orleans Parish School Bd., 861 F.2d 115 (5th Cir. 1988); Eggers v. Bullitt County School Dist., 854 F.2d 892 (6th Cir. 1988).

4. Attorneys' fees may also be recovered under section 1415(e)(4)(B) when settlement is reached prior to a due process hearing, if the parents establish that they are prevailing parties.

Barlow-Gresham Union High School Dist. 2 v. Mitchell, 940 F.2d 1280, 1285 (9th Cir. 1991); Shelly C. by Shelbie v. Venus Independent School Dist., 878 F.2d 862, 863-864 (5th Cir. 1989).

5. The determination of whether parents are prevailing parties for the purpose of awarding attorneys' fees is a factual determination. Barlow-Gresham, 940 F.2d at 1285.

6. "At a minimum, to be considered a prevailing party... the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." Texas State Teachers v. Garland Indep. School Dist., 489 U.S. 782, 27 792, 109 S. Ct. 1486, 1493 (1989) (emphasis added). There must be a "dispute," resolved in the plaintiff's favor, for the plaintiff to be a "prevailing party" under section 1415(e)(4)(B). In all the cases which have allowed parents to recover attorneys' fees when a settlement is reached prior to a due process hearing, a dispute existed between the parents and the school district prior to settlement.

In Barlow-Gresham, the school district sought an injunction prohibiting the parents from enrolling their son in the school for the balance of the school year and authorizing termination of

services by the school district. Barlow-Gresham, 940 F.2d at 1282. The settlement ultimately reached allowed the student to remain at the school in a newly-created program. Id. at 1283.

In Masotti v. Tustin Unified School Dist., 806 F. Supp. 221 (C.D.Cal. 1992), the parents requested an administrative hearing, charging that the school district had failed to implement their son's IEP. Id. at 222. The parties held a mediation conference and reached an interim agreement placing the student in a private residential care facility, but the district balked at a recommendation that the student remain there after the initial 30-day period. Id. The hearing was continued several times, and the district finally agreed to continue funding at the residential care facility.

Likewise, the parents in Shelly C., disapproving of the IEP plan formulated by the school district for their daughter, filed a request for a due process hearing. Shelly C., 878 F.2d at 862. The parties settled before the due process hearing was held. Id.

7. Here, Mrs. Kletzelman has failed to carry her burden of establishing by a preponderance of the evidence that a "dispute," for the purposes of 20 U.S.C. § 1415(e)(4)(B), existed between

the parties before CUSD agreed to place David at Mardan School. It is true that CUSD did not immediately agree with the Kletzelmans' position at the April 1993 IEP meeting that David was seriously emotionally disturbed and should be placed in a private school. However, CUSD did not take action in opposition to the Kletzelmans' position. Rather, CUSD arranged for additional, comprehensive testing to assess whether David was SED and arranged for speech and language therapy for David. When the results of the further testing and assessment by OCMHS confirmed that David was seriously emotionally disturbed, the CUSD agreed to place him at Mardan School without delay. The Kletzelmans had initially requested a fall 1993 placement for David, and CUSD provided that placement in June 1993, after OCMHS confirmed that David was SED. The Kletzelmans requested that David be placed in a private school, and CUSD did place David in a private school.

8. Accordingly, based on the facts of this case, the Court cannot find that a "dispute" existed in this matter for the purposes of 20 U.S.C. § 1415(e)(4)(B). Since no "dispute" between the parties has been proven, Plaintiff Kletzelman cannot be a

"prevailing party," and cannot recover attorneys' fees under 20 U.S.C. § 1415(e)(4)(B).

9. Any finding of fact more appropriately designated as a conclusion of law is incorporated herein as a conclusion of law.

DATED: _____

_____
LINDA H. McLAUGHLIN
United States District Court
Judge

12

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANN KLETZELMAN,	)	94-55438
	)	
Plaintiff-Appellant,	)	D.C. No.
	)	CV-93-01038-
v.	)	LHM
	)	
CAPISTRANO UNIFIED SCHOOL DISTRICT;	)	
CAPISTRANO UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION,	)	MEMORANDUM*
	)	Filed
	)	
Defendants-Appellees.	)	Nov. 15, 1995

Appeal from the United States District Court
for the Central District of California
Linda H. McLaughlin, District Judge, Presiding

Submitted October 20, 1995**
Pasadena, California

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit R. 34-4.

** The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R. App. p.34(a), Ninth Circuit R. 34-4.

Before: **POOLE** and **O'SCANNLAIN**, Circuit Judges; **MARSH**,*** District Judge.

Ann Kletzelman appeals the district court's judgment, after a bench trial, denying her request for attorney's fees from the Capistrano Unified School District ("CUSD") and the CUSD Board of Education in her action pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1415 (e) (4) (B) (West Supp. 1995). On appeal, Kletzelman contends that the district court erred in ruling that there was no dispute between Kletzelman and the CUSD and the Kletzelman was thus not a prevailing party entitled to fees and costs. Kletzelman also claims that the district court erred by denying her motion for a jury trial on the ground that the ten-day limit imposed by Federal Rule of Civil Procedure 38 had expired. We discuss these two claims in turn.

I

*** The Honorable Malcolm F. Marsh, United States District Judge for the District of Oregon, sitting by designation.

The IDEA "'confers upon disabled students an enforceable substantive right to public education in participating States, and conditions federal financial assistance upon a State's compliance with substantive and procedural goals of the Act,'" Hacienda La Puente Unified Sch. Dist. of L.A. v. Honig, 976 F.2d 487, 491 (9th Cir. (1992) (quoting Honig v. Doe, 484 U.S. 305, 310 (1988)); see 20 U.S.C.A. § 1414 (a) (5).

In addition, the IDEA requires participating states to adopt procedural safeguards, which include notification of parents or guardians of a disabled child of any proposed change in "the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child." 20 U.S.C.A. § 1415 (b) (1) (E).

Upon bringing a complaint, the parents or guardians are entitled to "an impartial due process hearing" conducted either by a state or local educational agency, or an intermediate educational unit, as determined by state law. 20 U.S.C.A. § 1415 (b) (2). In California, which has implemented the procedural safeguards required by 20 U.S.C.A. § 1415, the hearing is "conducted by a person knowledgeable in the laws governing

special education and administrative hearings [.]" Cal. Educ. Code § 56505 (c) (West 1989 & Supp. 1995); see Cal. Educ. Code §§ 56500-56507. After the hearing officer renders a decision, "[a]ny party aggrieved by the finding and decision" has the right to bring a civil action in state or federal court. 20 U.S.C.A. § 1415 (e) (2); see Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1469 (9th Cir. 1993), cert. denied, 115 S. Ct. 90 (1994).

II

Here, the district court found the following facts. In February 1993, Kletzelman requested that the CUSD test her son and schedule an IEP meeting to determine his educational needs and appropriate school placement for fall 1993. The CUSD scheduled the IEP meeting for April 27, 1993. Contending that David was seriously emotionally disturbed, the Kletzelmans wanted David to be placed in an appropriate private school, while the CUSD wanted to place David in a CUSD school for communicatively handicapped children. The CUSD scheduled a second IEP meeting to reconsider David's condition and placement. Prior to the second IEP meeting, the CUSD arranged

to have David examined by Orange County Mental Health Services, which concluded that David was seriously emotionally disturbed. At the IEP meeting on June 28, 1993, the CUSD agreed to classify David as seriously emotionally disturbed and to place him in a private school that was satisfactory to the Kletzelmans.

In July 1993, the Kletzelmans requested attorney's fees of approximately $4000 from the CUSD for their attorney's efforts in having David declared seriously emotionally disturbed and placed in a private school. When the CUSD refused to pay the fees, Ann Kletzelman filed suit pursuant to the attorneys' fees provision of the IDEA. 20 U.S.C.A. § 1415 (e) (4) (B).

III

Section 1415 (e) (4) (B) of the IDEA provides: "In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party." 20 U.S.C.A. § 1415 (e) (4) (B) (West Supp. 1995). This court has construed section 1415 (e) (4) (B) to justify the award of attorneys' fees to parents

who prevailed at an administrative hearing or reached a favorable settlement prior to a scheduled administrative hearing. Barlow-Gresham Union High Sch. Dist. v. Mitchell, 940 F.2d 1280, 1284 (9th Cir. 1991); McSomebodies (No. 1 v. Burlingame Elementary Sch. Dist., 897 F.2d 974, 975 (9th Cir. 1989); see Masotti v. Tustin Unified Sch. Dist., 806 F. Supp. 221, 224-25 (C.D. Cal. 1992).

Here, Kletzelman never requested an administrative hearing by filing a complaint pursuant to the IDEA, 20 U.S.C.A. § 1415 (b) (1) (E); instead, Kletzelman obtained satisfactory placement of David by taking part in two IEP meetings.

IV

A district court's discretion to deny a request for attorneys' fees is narrow. Abu-Sahyun v. Palo Alto Unified Sch. Dist., 843 F.2d 1250, 1252 (9th Cir. 1988). For the purpose of awarding attorneys' fees, a prevailing party is one that "'succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit.'" Parents of Student W. v. Puyallup Sch. Dist., No. 3, 31 F.3d 1489. 1498 (9th Cir. 1994) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)

(citation omitted)). "[A]t a minimum, to be considered a prevailing party . . . the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792 (1989) (citation omitted). "'Where the plaintiff's success on a legal claim can be characterized as purely technical or de minimis, '" the plaintiff cannot recover fees as a prevailing party. Parents of Student W., 31 F.3d at 1497 (quoting Texas State Teachers, 489 U.S. at 792). "There must be a causal link between the litigation brought and the outcome gained." Id.

The district court held that Kletzelman failed to carry her burden of establishing by preponderance of the evidence that a "dispute," for the purposes of 20 U.S.C.A. § 1415 (e) (4) (B), existed between the parties before the CUSD agreed to place David in a private school. Two IEP meetings, which resulted in a school placement that satisfied the parents, did not give rise to a dispute for the purposes of section 1415 (e) (4) (B) of the IDEA. Supported by the record and the case law of the circuit, the

district court's denial of Kletzelman's request for attorney's fees was not an abuse of discretion.

V

Kletzelman also claims that the district court erred by denying her motion for a jury trial on the ground that the ten-day limit had expired. Fed. R. Civ. p. 38.

Federal Rule of Civil Procedure 38 (b) provides:

Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5 (d). Such demand may be indorsed upon a pleading of the party.

"The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury." Fed. R. Civ. P. 38 (d).

The last pleading was the CUSD's Answer, which was filed with the court on January 6, 1994. On February 7, 1994, Kletzelman's attorney made an oral motion before the court for

trial by jury. The attorney claimed that he had not received proper service of the Answer because he received a facsimile instead of personal service or mail service. Fed. R. Civ. P. 5 (b). However, the proof of service provided by the CUSD's attorney indicated that the Answer was mailed to Kletzelman's attorney on December 16, 1993. Moreover, when pressed by the court, Kletzelman's attorney conceded that the motion was untimely. Since Kletzelman's motion for a jury trial was untimely and not in writing as required by Rule 38, the district court did not err in finding that Kletzelman had waived her right to a trial by jury. Fed. R. Civ. P. 38.

Despite a party's untimely demand for trial by jury, a district court in its discretion and upon motion may order a jury trial. Fed. R. Civ. P. 39 (b); Blau v. Del Monte Corp., 748 F.2d 1348, 1357 (9th Cir. 1984), cert. denied, 474 U.S. 865 (1985). However, this court has held that this discretion is "narrow" and "does not permit a court to grant relief when the failure to make a timely demand results from an oversight or inadvertence." Blau, 748 F.2d at 1357 (citing Lewis v. Time, Inc., 710 F.2d 549, 556-57 (9th Cir. 1983)). Here, Kletzelman's attorney revealed

his oversight and inadvertence by conceding to the district court that he did not even know about Rule 38's ten-day requirement until the court drew his attention to it on February 7, 1994, one month after the filing of the last pleading. Therefore, the district court did not abuse its discretion in denying Kletzelman's untimely demand for trial by jury.

VI

For the foregoing reasons, the district court's judgment denying Kletzelman's request for attorney's fees under section 1415 (e) (4) (B) of the IDEA is affirmed.

AFFIRMED.

March 18, 1993

Pam Poteet, M.S.

Del Obispo School

25591 Camino Del Avion

San Juan Capistrano, CA 92675

Re: David Kletzelman

Dear Pam:

The following narrative concerns David Kletzelman.

David was initially evaluated on 2/13/92, having been seen by Dr. Georgia Prentice, a child neurologist, Peter Levin, M.D., a behavioral pediatrician at the Child Development Center, 12/9/91, and the staff psychologists at the Child Development Center.

10/28/91, Mary Bender Furman, Ph.D. and Keith McBurnett, Ph.D.

The clinical findings were as follows: David fulfilled the criteria for the diagnosis of Attention Deficit Disorder, 314.01, moderate in severity and some of the components of oppositionality, 313.81. He had normal intelligence without evidence of a learning disability. He was diagnosed as having a Chronic Vocal Tic Disorder, 307.23, with a question of Tourettes Disorder. He had been placed on Haldol 0.25 to 0.5 mg at bedtime, but had gained 20 lbs.

Contributing paternal family history included some evidence of hyperactivity, thought disorder, and a movement disorder. There was some evidence of depression on the mother's side of the family. The patient's half sister had a history of a seizure disorder.

Initial evaluation and rating scales at this office revealed David fulfilled the criteria of ADHA, but in addition, had evidence of

inappropriate impulse control, substantial amounts of anger and rage, fears of retribution from authority figures, nightmares that reenacted violent acts, and evidence of socially inappropriate acting out. He also had subtic tics or stereo typic mannerisms (sniffing, hand movements, some rare eye blinking). He had high scores in the aggressive dimensions of behavior, as well as inattention and overactivity.

David's Haldol was tapered and stopped. In March he was evaluated at school with a Yale Global Tic Severity Evaluation; he had minimal tic activity. In March 1992 he was started on Dexedrine. He didn't respond. He was switched to Ritalin in April 1992. He responded to 5 mg. Ritalin at 8 AM and 12 noon. His mannerisms did not worsen. His behavior at home and school, however, improved and he had less hyperactivity and impulsivity; his rating scales (SNAP, Iowa Conners) showed improvement. The score on I/Q was 10 in 3/92 and dropped to 5 in 4/93 and the aggression rating changed from 14 to 8. The Conners Parent/Teacher dropped from 27 to 12 (at home). He

had a question of a sniffing-tic, but this was not disruptive or socially problematic.

David was seen in therapy for ongoing issues of anger. In addition, family therapy was focused on relationships, limit setting, and effective conversational communication. Because of ongoing chaotic, and inappropriate behavior, that was not related to ADHD, and poor school performance in December at the Child Development Center, he was started on 10 mg. of Mellaril at night.

During the next 6 weeks, he was able to gain in the therapeutic alliance, he responded to Mellaril 20 mg. at night and 10 mg. in the AM with the only untoward effect being weight gain. He had fewer nightmares, more sleep and school performance was much improved by January 1993. He was able to process his nightmares with his family in therapy and these nightmares ceased. In addition, his Ritalin was increased to 10 mg. at 8:00 AM and noon and 7.5 mg. in the late afternoon daily with improvement.

In February bec. of persistent hoarseness this therapist referred him to be evaluated for laryngeal nodules. His behavior at home has been, at times, erratic but he is still stable. he continues to be watched for occasional tics or stereo typic mannerisms.

His visits now focus on David's psychopharmacology; approximately once a month he is seen for psychotherapy, and the family is seen for family interactions with David, and spousal/parenting issues.

David is a bright, intelligent, sensitive boy who has demonstrated substantial progress in his ability to gain an alliance with his therapist, deal with impulse control and frustration tolerance and improve his social skills. He has, with his parents, worked hard at expressing his feelings approximately and has done well in a structured school environment at the Child Development Center. He is a cooperative patient in regards to his medication. Both

parents are dedicated to working as a family unit. This therapist highly recommends David to your school.

If I can provide additional information please call.

Sincerely,

Robert S. Dorbin, M.D., F.A.A.P.

CAPISTRANO UNIFIED SCHOOL DISTRICT

SOUTH ORANGE COUNTY
SPECIAL EDUCATION LOCAL PLAN AREA

( ) Initial
( ) Review
( ) 3 Year Review

Name: Kleczewski, David (Last) (First) (Middle)
Address: 32552 Antelope
City: Dana Point, CA 92629
Home Phone: (H) 496-6172
Work Phone: ( )
Birthdate: 4-4-84 Age: 8 Grade: K
District of Residence: CUSD
School of Residence: Del Obispo
School of Attendance: K. T. Child
Primary Service Provider: David Asplin

Special Education Recommended: ✓ Yes (check all that apply)
___ SLD ___ LSP ___ AUT ___ ORTH
✓ SH ___ MD ___ SED ___ VIS
___ Dual/Blind ___ OHI

___ No (Check Recommendations)
___ Modify Regular Program
___ Continue in current program
___ Dismiss from Special Education

Functional Description of Handicap (Summarize pertinent data):

Special Education Programs Options Considered (Check)	Options Selected:	Frequency/Duration/Comments	Start Date	End Date
___ SED	SED:			
___ DHI	DHI: Sp/Lang.	2 30 min sessions weekly	4/23	4/24
___ SDP	SDP:			
✓ SDC	SDC: ✓		4/23	4/24
___ State School	State School:			
___ Non Public School	Non Public School:			
	Other:			

Pupil Lang: 1. Dom: Eng 2. Eng Prof: ___
Home Lang: Eng
Student's Residence: ___ Withers ___ Parent ___ LCI
Ethnicity: ___ Asian Indian/Alaskan ___ Asian/Pac Isl ___ Filipino ___ Black ___ Hispanic ✓ White Other: ___
Parent Advised of SEP Meeting by: ___ Telephone ✓ Letter Date: 4-2-97
Parent/guardian (X) or representative ✓ did ___ did not attend the meeting.*
*Does further action exist to encourage attendance:
Next Review Date: 4/98
Three Year Reevaluation Due: 4/24
1.SE.10A (Revised 9/97)

PS Type: ___ Committee ED Type: ___ Extended School Year: ___ Yes ___ No
Percent of time in regular Program: ___ Transportation: ___ Bus ___ Special Ed ___ None
Refer for Additional Assessment to: AC

The signatures of the following staff affirm that proper procedural safeguards have been adhered to. Eligibility has been determined according to the Administrative and Education Codes. Signatures indicate agreement or disagreement with the IEPT recommendations including SEP goals and objectives. Areas of disagreement should be noted with an* and fully explained on an attached statement.

✓ I/We consent to have the above student participate in the recommended special education program. I understand that my written consent can be revoked at any time. Only Speech & Language Therapy.

___ I/We acknowledge being informed of my rights and appeal procedures, safeguard procedures, confidentiality of records and due process information procedures on the reverse side of this page. We Disagree w/ Placement.

Name	Title	Date	Present	Excused
Virginia Rashell	Administrator	4/23/97	X	
[illegible]	Parent, Joe Kleczewski	4/23/97		
Daphne Hamlett	Teacher	4/23/97		
[illegible]	Psychologist	4/23/97	✓	
[illegible]	Speech Pathologist	4/23/97	✓	
[illegible]	Parent Advocate	4/23/97	✓	
[illegible]	[illegible]	4/23/97	*	

VIRGINIA RASHELL ADVOCATE 4/23/97

2
CW

29

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANN KLETZELMAN, Plaintiff, v. CAPISTRANO UNIFIED SCHOOL DISTRICT; BOARD OF EDUCATION OF CAPISTRANO UNIFIED SCHOOL DISTRICT; and Does 1-25, inclusive, Defendants.	)	CASE # SA CV 93-1038 LHM JOINT REQUEST RE: SUMMARY JUDGMENT OR IN THE ALTERNATIVE, FOR EVIDENTIARY HEARING

In response to this Court's civil minutes dated December 17, 1993, plaintiff ANN KLETZELMAN and defendants CAPISTRANO UNIFIED SCHOOL DISTRICT and BOARD OF EDUCATION OF CAPISTRANO UNIFIED SCHOOL DISTRICT jointly report the following:

1. The parties have discussed settlement of this matter in good faith, but have not been able to come to an agreement.

Please see correspondence attached hereto and incorporated herein as Exhibits 1 and 2.

2. The parties jointly request the Court's permission to bring cross-motions for Summary Judgment, as the parties believe that this would be the most expedient way to resolve the factual and legal issues in this matter.

3. In the alternative, if the Court refuses to allow the parties to bring motions for summary judgment, the parties jointly request an evidentiary hearing as suggested by the Court.

DATED:

EMIR PHILLIPS, ESQ.
Attorney for Plaintiff
Ann Kletzelman

DATED:

RONALD D. WENKART, ESQ.
Attorney for Defendants
Capitrano Unified School
District And Board Of
Education Of Capistrano
Unified School District